

DAVID KING - HIGHLY CONFIDENTIAL

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

VIACOM INTERNATIONAL, INC., COMEDY
PARTNERS, COUNTRY MUSIC
TELEVISION, INC., PARAMOUNT
PICTURES CORPORATION, and BLACK
ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs.

No. 07-CV-2103

YOUTUBE, INC., YOUTUBE, LLC,
and GOOGLE, INC.,

Defendants.

-----X

THE FOOTBALL ASSOCIATION PREMIER
LEAGUE LIMITED, BOURNE CO., et al.,
on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

No. 07-CV-3582

YOUTUBE, INC., YOUTUBE, LLC,
and GOOGLE, INC.,

Defendants.

-----X

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF DAVID KING
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, JANUARY 13, 2010

JOB NO. 18545

DAVID KING - HIGHLY CONFIDENTIAL

Page 2

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 JANUARY 13, 2010

3 9:06 A.M.

4

5 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF DAVID
6 KING, at WILSON SONSINI GOODRICH & ROSATI, One Market
7 Plaza, Spear Tower, Suite 3300, San Francisco,
8 California, pursuant to notice, before me, KATHERINE E.
9 LAUSTER, CLR, CRR, RPR, CSR License No. 1894.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 3

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 A P P E A R A N C E S:

3 FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC.:

4 JENNER & BLOCK, LLP
5 By: LUKE C. PLATZER, ESQ.
6 1099 New York Avenue, NW, Suite 900
7 Washington, D.C. 20001
8 T.202.639.6000
9 F.202.661.4813
10 lplatzer@jenner.com

11

12 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC, and
13 GOOGLE, INC.:

14

15 MAYER BROWN, LLP
16 By: BRIAN M. WILLEN, ESQ.
17 1675 Broadway
18 New York, New York 10019-5820
19 T.212.506.2146
20 F.212.202.1910
21 bwillen@mayerbrown.com

22

23

24 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

25

26 BERNSTEIN LITOWITZ, BERGER & GROSSMANN, LLP
27 By: BENJAMIN GALDSTON, ESQ.
28 12481 High Bluff Drive, Suite 300
29 San Diego, California 92130
30 T.858.720.3188
31 F.858.436.0188
32 beng@blbglaw.com

33

and

34 BY: LAUREN A. McMILLEN, ESQ.
35 1285 Avenue of the Americas
36 New York, New York 10019
37 T.212.554.1593
38 F.212.554.1444
39 laurenm@blbglaw.com

40

41

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 4

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 A P P E A R A N C E S: (Continued)

3 FOR DEFENDANT GOOGLE, INC.:

4 GOOGLE, INC.

5 By: ADAM L. BAREA, Esq.

6 1600 Amphitheatre Parkway

7 Mountain View, California 94043

8 T.650.214.4879

9 F.650.618.1806

10 adambarea@google.com

11 Also Present: ARMANDO ARASCO, Videographer

12 KELLY TRUELOVE, Viacom consultant

13

14

15

16

17

18

19

20

21

22

23

24

25

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 47

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:04:38 2 BY MR. PLATZER:

10:04:38 3 Q. Okay. And in that partition the format in
10:04:41 4 which the match information was sent back, would that be
10:04:45 5 encrypted video ID followed by Y-T-B?

10:04:50 6 A. Followed by -- yes. Y-T-B, yes.

10:04:55 7 Q. And is the same true for the YTU database,
10:05:02 8 except that it would end with YTU rather than YTB?

10:05:06 9 A. That -- that's what it says here.

10:05:08 10 Q. Right. Sorry to subject you to that. We can
10:05:12 11 put that document away.

10:05:14 12 A. Do I have to keep all these here, or can I get
10:05:17 13 rid of any of these?

10:05:20 14 Q. Put them in a stack for the court reporter.
10:05:22 15 She's going to have to take them with her afterwards.

10:05:39 16 Okay. I'd asked you some questions earlier
10:05:42 17 about the YTAM database. I'd like to ask you some
10:05:46 18 questions about the YTB database now. And if you could
10:05:49 19 actually turn back to -- at a page we were looking at on
10:05:53 20 the "YouTube Audio/Video Fingerprinting Tech Talk"
10:06:00 21 presentation.

10:06:01 22 A. Uh-huh. What page was it again?

10:06:01 23 Q. I believe --

10:06:01 24 A. I just put it away.

10:06:04 25 Q. I believe -- I believe it's the one that has

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 48

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:06:07 2 the Bates number 9684155.

10:06:15 3 A. Is this the page --

10:06:15 4 Q. That --

10:06:15 5 A. -- you're referring to?

10:06:17 6 Q. That is the correct page, yes.

10:06:21 7 And you see the bullet point here that begins:

10:06:24 8 "YTB: Fingerprints for licensed content

10:06:29 9 claimed partner uploaded videos"?

10:06:32 10 Can you explain to me what types of content populated

10:06:36 11 the YTB database? And if that content changed over

10:06:40 12 time, feel free to state that in your answer.

10:06:47 13 MR. WILLEN: Objection to the form.

10:06:58 14 THE WITNESS: So the YTB database typically

10:07:01 15 contained fingerprints of content that had been directly

10:07:04 16 sent to YouTube, and where YouTube then took that

10:07:08 17 reference file, ran it through the Audible Magic

10:07:13 18 fingerprint generator. We sent the fingerprint over to

10:07:16 19 Audible Magic and specified, you know, an ID for them to

10:07:21 20 be able to communicate back to us about any subsequent

10:07:26 21 match activity.

10:07:29 22 I wouldn't necessarily agree with the -- the

10:07:32 23 way it's characterized in this bullet point.

10:07:35 24 BY MR. PLATZER:

10:07:36 25 Q. Why wouldn't you agree with the way it's

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 49

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:07:38 2 characterized in this bullet point?

10:07:40 3 A. Well, it's -- he calls it "licensed content,"
10:07:45 4 and -- and that -- that implies that there was a
10:07:55 5 license, where, in fact, YTB -- the YTB partition did
10:08:05 6 not necessarily always carry a license, per se, with --
10:08:10 7 with -- with the -- with the fingerprint.

10:08:14 8 Q. In what circumstances would the YTB database
10:08:17 9 not carry a license with the fingerprint?

10:08:20 10 MR. WILLEN: Objection to the form.

10:08:24 11 THE WITNESS: The YTB database was used for,
10:08:28 12 more specifically -- I think you're trying to be really
10:08:35 13 specific about this. It was used for, if a rights
10:08:38 14 holder gave us a file and said, I want you to match
10:08:41 15 using Audible Magic with this file, then we went through
10:08:46 16 the whole process which I described before that was done
10:08:51 17 on behalf of rights holders that wanted any of the
10:08:57 18 various policies offered by YouTube.

10:09:00 19 So this implies -- implies a certain usage
10:09:03 20 policy, but the -- the YTB partition was used for a
10:09:11 21 variety of usage policies.

10:09:13 22 BY MR. PLATZER:

10:09:15 23 Q. Okay. So a fingerprint that was in the YTB
10:09:18 24 partition could be set to block as well as to monetize
10:09:21 25 or to track?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 50

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:09:23 2 A. That is correct. So, you know, we -- it's
10:09:26 3 really logically only three policies that make sense.
10:09:29 4 And, you know, those are the three -- monetize, track or
10:09:34 5 block.

10:09:35 6 Q. And you testified that these were fingerprints
10:09:38 7 where the reference work was supplied to YouTube. By
10:09:40 8 whom? Who would supply works to YouTube as reference
10:09:47 9 files for inclusion in the YTB database?

10:09:50 10 MR. WILLEN: Objection to form. It's
10:09:51 11 compound. It's vague as to time.

10:09:57 12 THE WITNESS: Typically, the provision of
10:10:04 13 these files would come from the rights holder of -- of
10:10:06 14 record.

10:10:07 15 BY MR. PLATZER:

10:10:11 16 Q. Could any rights holder come to YouTube and
10:10:15 17 say, "I want to add my content into the YTB database"
10:10:19 18 and block it?

10:10:20 19 A. Yes.

10:10:25 20 Q. Were there any rights holders --

10:10:28 21 A. And -- and I might add that we -- we work with
10:10:34 22 about 1200 companies at this point that do precisely
10:10:37 23 that.

10:10:39 24 Q. And so are there rights holders who have all
10:10:44 25 of their content in the YTB database set to block?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 67

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:47:34 2 I don't, nor did I prepare myself on that, because it
10:47:39 3 was specific to, individual agreements.

10:47:43 4 I know, as -- as a matter of general practice,
10:47:47 5 in today's environment, you know, as of 2010, we have
10:47:53 6 a -- a form agreement called "The Content Identification
10:47:57 7 Management Agreement," which -- that speaks to that,
10:48:02 8 and -- and -- you know, and that's something that --
10:48:05 9 that I'm used to working with.

10:48:11 10 Q. Okay. Let's transition to talking about the
10:48:13 11 YTU partition. And if you'd turn your attention back to
10:48:21 12 King 3, the page we were looking at, there's a bullet
10:48:24 13 point that says YTU fingerprints for UGC claimed as
10:48:28 14 reference by partners.

10:48:30 15 Can you explain your understanding of what
10:48:35 16 types of content populated the YTU database?

10:48:45 17 A. The YTU database was populated with
10:48:50 18 fingerprints of claimed UGC where the claimant
10:48:58 19 specifically asked us to use that UGC -- is "UGC" a
10:49:06 20 clear enough term?

10:49:07 21 Q. Yes.

10:49:08 22 A. -- where the claimant asked us specifically to
10:49:11 23 use that UGC as a reference file in the fingerprinting
10:49:18 24 system.

10:49:20 25 Q. And was the YTU partition used only for

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 68

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:49:24 2 blocking, or was it also used for other purposes?

10:49:27 3 MR. WILLEN: Objection to the form.

10:49:32 4 THE WITNESS: The policies held with -- within

10:49:35 5 Y- -- with those -- that set of fingerprints would have

10:49:40 6 varied across the three -- the -- the -- the three

10:49:46 7 policy types, be it block, monetize, or track.

10:49:50 8 BY MR. PLATZER:

10:49:53 9 Q. And it says here, "UGC claimed as reference by

10:50:00 10 partners." Can you explain your understanding of the

10:50:04 11 concept of a partner claiming content using YouTube's

10:50:08 12 system?

10:50:15 13 A. Claiming, as the word means in English, is --

10:50:22 14 is the concept of -- of saying that I have an ownership

10:50:26 15 stake in this piece of content.

10:50:29 16 Q. And how would a partner communicate that

10:50:31 17 information to YouTube in order for that content to end

10:50:34 18 up in the YTU database?

10:50:38 19 MR. WILLEN: Objection to the form. It's

10:50:41 20 vague as to time.

10:50:44 21 THE WITNESS: So claiming and -- and adding it

10:50:49 22 to this database are two distinct things. So claiming

10:50:56 23 of UGC can happen in many different ways through our

10:51:01 24 systems. So --

25

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 70

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:52:39 2 59 seconds.

10:52:40 3 So that same user that had uploaded the
10:52:43 4 10-minute video with one second of your content in it,
10:52:47 5 they could edit that video, remove that one second and
10:52:52 6 re-upload it to the site, and if we had a fingerprint in
10:52:55 7 place that said that whole ten minutes, match against it
10:52:59 8 and call it your property, then -- then you would be
10:53:02 9 making a overbroad copyright claim against that
10:53:06 10 uploader.

10:53:07 11 So this is one of the key areas of
10:53:10 12 responsibility on behalf of -- on the side of the rights
10:53:14 13 holder to operate the system, their side of the system,
10:53:18 14 in full cognizance of the nuance of the system, and --
10:53:25 15 and thus why we typically just can't grant access to
10:53:31 16 absolutely anybody without any educational process to
10:53:34 17 these types of tools. It's very important that they
10:53:37 18 understand what it is that they're doing, how they
10:53:39 19 operate and what their responsibilities are in operating
10:53:42 20 it.

10:53:42 21 BY MR. PLATZER:

10:53:58 22 Q. Your testimony was that UGC was added to the
10:54:02 23 reference database at the express request of a content
10:54:05 24 owner. Is there any particular procedure to which that
10:54:09 25 request had to be communicated to YouTube in order for

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 71

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:54:14 2 claimed UGC to be added to the YTU partition?

10:54:19 3 MR. WILLEN: Objection to form. Vague as to
10:54:21 4 time.

10:54:23 5 THE WITNESS: As -- as a practical matter,
10:54:25 6 there must be a mechanism or how would it happen? So --
10:54:31 7 so, yes, there is a mechanism for a rights holder to
10:54:38 8 request this facility.

10:54:39 9 BY MR. PLATZER:

10:54:40 10 Q. And what is that mechanism?

10:54:47 11 A. That mechanism is typically searching for a --
10:54:56 12 or -- or using our -- our search tools to -- to first
10:55:00 13 identify that -- that -- that UGC. Then the
10:55:07 14 responsibility is to review that UGC in its entirety to
10:55:12 15 ascertain that you own the -- to own -- that you own
10:55:15 16 that clip from beginning to end, and then a simple check
10:55:21 17 box that says -- I can't remember the precise verbiage,
10:55:24 18 but it says something to the effect of add as reference.

10:55:31 19 Q. Okay. So the UGC that's claimed by a
10:55:35 20 partner had -- would only be added to YTU if they search
10:55:39 21 for it using the -- YouTube's search tool for partners,
10:55:46 22 watch it in its entirety, and check a box directing
10:55:50 23 YouTube to add it as a reference fingerprint?

10:55:52 24 MR. WILLEN: So, objection to the form,
10:55:54 25 mischaracterizes the testimony. It's vague as to time.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 72

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:55:58 2 It's also ambiguous as to the word "partner."

10:56:08 3 THE WITNESS: I think I -- and I think I stand
10:56:11 4 by my former description of this. And -- so as a -- as
10:56:18 5 a pragmatic matter, the -- the express piece of work, if
10:56:25 6 you will, that goes beyond just the -- the, you know --
10:56:31 7 is simply checking a box. The fact that they have to
10:56:35 8 view the video in its entirety before they check that
10:56:38 9 box, is more a matter of just sort of ex- -- external
10:56:42 10 reality, as opposed to any sort of burden that we're
10:56:46 11 trying to place on -- on -- on the users of the system.
10:56:49 12 BY MR. PLATZER:

10:56:50 13 Q. But do they have to view the video in its
10:56:52 14 entirety within YouTube's search console?

10:56:56 15 MR. WILLEN: Objection to the form.

10:57:00 16 THE WITNESS: They could -- they could view
10:57:02 17 that video on YouTube itself, just as easily, but they
10:57:07 18 need to basic- -- so what they need to do is they need
10:57:11 19 to represent and warrant to YouTube that the entirety of
10:57:18 20 the video that they're asking us to turn into a
10:57:21 21 reference file is indeed their property.

10:57:24 22 How they make those determinations is -- it's
10:57:28 23 flexible. So they could certainly do it on YouTube.com
10:57:33 24 just like any other user does, and make that
10:57:36 25 determination there.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 73

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:57:36 2 BY MR. PLATZER:

10:57:38 3 Q. Can a content owner request that YouTube add a
10:57:47 4 claimed piece of UGC to the YTU partition in the absence
10:57:52 5 of a prior agreement with YouTube of the sort you
10:57:56 6 described earlier?

10:57:58 7 MR. WILLEN: Objection to the form. Vague as
10:58:00 8 to time.

10:58:06 9 THE WITNESS: So what I've been trying to --
10:58:08 10 to bring to life for you is the notion that a -- that
10:58:17 11 when a -- a company or a person asks us to use UGC to
10:58:24 12 make future claims on their behalf, that it's very
10:58:28 13 important that they understand their responsibilities.

10:58:31 14 So in a broad sense I would say that under an
10:58:36 15 agreement of -- and an under- -- a mutual understanding
10:58:40 16 of what those responsibilities are is vital to the good
10:58:44 17 operating of such a system, and we endeavor to always --
10:58:49 18 we've always endeavored to -- to have that level of
10:58:54 19 understanding between the two parties before access to
10:58:57 20 such a system was granted.

10:59:01 21 And I think we can agree that it's a somewhat
10:59:05 22 complex topic, and that -- that it took me a little
10:59:07 23 while to explain, and it took a number of questions to
10:59:11 24 really get to the bottom of exactly how that functions.

10:59:14 25 So I think we can agree that it would not be

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 74

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

10:59:16 2 obvious on the face of it, to -- to the layman that had
10:59:21 3 never viewed such a system, that such responsibilities
10:59:23 4 would -- would exist.

10:59:25 5 BY MR. PLATZER:

10:59:26 6 Q. Okay. But -- you've explained the rationale
10:59:29 7 for your policy, but I -- I still don't think I have an
10:59:32 8 answer as to what your policy actually is.

10:59:35 9 My question is this. If a content owner has
10:59:38 10 not entered an agreement with YouTube, can they claim
10:59:43 11 UGC for the purposes of adding it to the YTB par- -- or
10:59:48 12 the YTU partition?

10:59:50 13 MR. WILLEN: Objection to the form, and I
10:59:51 14 think this has been asked and now answered twice.

10:59:55 15 MR. PLATZER: It's been asked twice. It
10:59:57 16 hasn't been answered at all.

11:00:00 17 MR. WILLEN: Maybe he didn't answer it the way
11:00:02 18 you wanted him to answer it.

11:00:06 19 MR. PLATZER: It's a yes or no question.

11:00:07 20 MR. WILLEN: Maybe it is and maybe it isn't.

11:00:09 21 THE WITNESS: Okay. All right. I think what
11:00:10 22 I'm trying to do is to -- to formulate these -- you
11:00:15 23 know, to formulate this in a way that is precise to what
11:00:18 24 actually happened.

11:00:22 25 So -- so as a -- so it is true that both

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 75

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:00:25 2 parties needed to come to a mutual understanding of what
11:00:29 3 was entailed in using this system before access was
11:00:34 4 granted to the rights holder to use the system.

11:00:38 5 BY MR. PLATZER:

11:00:42 6 Q. And that understanding had to be reflected in
11:00:44 7 some kind of agreement?

11:00:46 8 A. Well, "agreement" is an English word. So I
11:00:50 9 know you guys use it in a very specific way, but I would
11:00:54 10 say that coming to an understanding would be called
11:00:57 11 agreement.

11:01:04 12 Q. Did a content owner need to be able to access
11:01:08 13 a restricted portion of the YouTube website in order to
11:01:11 14 use this tool?

11:01:12 15 MR. WILLEN: Objection to the form. Vague as
11:01:16 16 to time.

11:01:17 17 THE WITNESS: The specific check box for
11:01:22 18 saying, this video, add it to the database, is a -- is
11:01:30 19 not open to everybody on YouTube.com.

11:01:32 20 BY MR. PLATZER:

11:01:34 21 Q. Okay. So you need to access a restricted
11:01:38 22 portion of the website in order to --

11:01:41 23 A. As we discussed --

11:01:42 24 THE REPORTER: One at a time. ". . . in order
11:01:43 25 to. . ."

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 76

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:01:43 2 BY MR. PLATZER:

11:01:44 3 Q. -- utilize that check box.

11:01:46 4 MR. WILLEN: Objection to the form.

11:01:47 5 Mischaracterizes the testimony.

11:01:50 6 THE WITNESS: After all that, do you mind

11:01:51 7 restating, because it got --

11:01:52 8 BY MR. PLATZER:

11:01:59 9 Q. In order to utilize the check box that adds a
11:02:03 10 reference fingerprint for a piece of claimed UGC to the
11:02:09 11 YTU partition, does a content owner need to access a
11:02:13 12 restricted portion of the YouTube website?

11:02:16 13 MR. WILLEN: And same objection.

11:02:23 14 THE WITNESS: So to -- to be clear, that
11:02:25 15 the -- the -- or as -- as we discussed, not --
11:02:30 16 they're -- these tools are not available to -- to
11:02:36 17 just -- they're -- they're not part of YouTube.com, per
11:02:39 18 se. They're not on the public website. They're not
11:02:42 19 used by -- by everyone. These are professional tools
11:02:46 20 used in conjunction with understandings with serious
11:02:51 21 parties.

11:02:52 22 BY MR. PLATZER:

11:02:56 23 Q. And again -- and I realize that you like to
11:03:00 24 explain the reasons behind your policies, but I still
11:03:03 25 don't have an answer as to my question which is that, is

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 77

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:03:06 2 this check box that you've been talking about only

11:03:09 3 accessible through a portion of the YouTube website that

11:03:12 4 is restricted?

11:03:13 5 MR. WILLEN: He's answered this question three

11:03:15 6 times.

11:03:15 7 MR. PLATZER: He's explained policies three

11:03:18 8 times, but it's a yes or no question. Is it part of the

11:03:20 9 restricted website?

11:03:22 10 MR. WILLEN: Well, you -- you can give the --

11:03:24 11 whatever answer you think is appropriate to the

11:03:26 12 question.

11:03:30 13 THE WITNESS: So I'm trying to be clear

11:03:32 14 that -- that as we talk about services like

11:03:38 15 fingerprinting, that those are only accessible to -- to

11:03:48 16 entities where we have some form of agreement, and I use

11:03:54 17 "agreement" in the broad sense, in the broad sort of

11:03:58 18 normal English sense of "agreement."

11:04:00 19 BY MR. PLATZER:

11:04:01 20 Q. And specifically how are those tools

11:04:03 21 accessible? If a content owner wants to utilize that

11:04:08 22 tool, do they have to go to a website that is protected

11:04:11 23 by a password, rather than through the YouTube website

11:04:17 24 generally?

11:04:18 25 A. So rights holders are given login credentials

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 78

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:04:29 2 to access these tools.

11:04:31 3 Q. Thank you.

11:04:41 4 Do these three database partitions on the page

11:04:45 5 of King 3 that we've been looking at, YTAM, YTB, and

11:04:50 6 YTU, do those represent the universe of content that

11:04:55 7 Audible Magic was searching for on behalf of YouTube?

11:04:58 8 MR. WILLEN: Objection to the form.

11:05:09 9 THE WITNESS: So these are the specific

11:05:13 10 databases against which YouTube queries.

11:05:16 11 BY MR. PLATZER:

11:05:16 12 Q. Okay. So YouTube would only query Audible

11:05:19 13 Magic to identify a reference fingerprint if that

11:05:23 14 reference fingerprint were located in one of these three

11:05:26 15 partitions?

11:05:27 16 MR. WILLEN: Objection to the form.

11:05:28 17 THE WITNESS: That's -- yeah, that's -- yes,

11:05:32 18 I'm -- that's -- these were our databases.

11:05:37 19 BY MR. PLATZER:

11:05:41 20 Q. Okay. I'd like to ask about how videos that

11:05:48 21 are removed from the YouTube website are treated with

11:05:52 22 regards to these databases.

11:05:56 23 To start off, are any videos that are removed

11:06:01 24 by YouTube from the YouTube website fingerprinted and

11:06:07 25 then added to an Audible Magic database with a policy of

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 84

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:22:32 2 THE WITNESS: I just wanted to say that, you
11:22:34 3 know, in a heated moment, I -- I did say that you would
11:22:37 4 be well within your rights to -- to ask for removal of
11:22:42 5 a -- of a -- of a video from the site based on, you
11:22:46 6 know, one second of content.

11:22:49 7 I'm not actually, you know, a copyright
11:22:52 8 lawyer, and not really in a position to -- to speak to
11:22:55 9 that. And this was a -- you know, I don't think that
11:22:58 10 would actually be a logical thing to do. I feel like
11:23:01 11 the -- you know, the -- from whatever expertise I have
11:23:05 12 in the matter, that would be -- that would be
11:23:07 13 inappropriate at that level. But anyway --

11:23:10 14 BY MR. PLATZER:

11:23:12 15 Q. All right. Understood.

11:23:15 16 Before we broke to change the tape, we were
11:23:18 17 discussing what happens to videos that YouTube removes
11:23:23 18 from the service, and we were -- had just finished
11:23:27 19 talking about terms of service violations.

11:23:29 20 A. Uh-huh.

11:23:30 21 Q. The next category I wanted to ask about are
11:23:33 22 videos that are removed pursuant to a sort of formal
11:23:36 23 DMCA takedown request. And is that terminology that
11:23:42 24 you're familiar with, "DMCA takedown request"?

11:23:46 25 A. Yes.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 85

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:23:46 2 Q. And I think I know what the answer to this is
11:23:50 3 based on the colloquy we've had so far, but I just want
11:23:54 4 to confirm. If YouTube received a DMCA takedown request
11:23:59 5 from a copyright owner, and that takedown request did
11:24:04 6 not go through the password protected portion of the
11:24:08 7 YouTube website that partners could use to check the box
11:24:15 8 and say add this to YTU -- in other words, if it were a
11:24:21 9 traditional DMCA takedown request, such as a letter or
11:24:26 10 an e-mail requesting that a video be removed from
11:24:28 11 YouTube's service, would the video that the content
11:24:34 12 owner requested be removed, be fingerprinted and added
11:24:38 13 to the YTU partition?

11:24:42 14 MR. WILLEN: Objection to the form.

11:24:43 15 THE WITNESS: I think the -- the -- if you
11:24:48 16 examine the level of information that comes in on a DMCA
11:24:53 17 takedown request, it does not include any information
11:24:58 18 about the -- the quantity of the video that is being
11:25:05 19 objected to. It simply just -- it says I have a right
11:25:09 20 at some level to request a takedown of this, and I --
11:25:16 21 and I am doing so.

11:25:18 22 So that does not give YouTube sufficient
11:25:20 23 information to be able to diligently understand whether
11:25:26 24 that user upload is -- meets the criteria for it being
11:25:39 25 included in fingerprint database.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 86

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:25:42 2 So as we -- the example we discussed was if
11:25:45 3 it's -- if you're making your claim of copyright
11:25:49 4 infringement based on a very short segment of content in
11:25:53 5 that video, and your DMCA notice simply says take this
11:25:58 6 video down, with no additional information, then we are
11:26:02 7 not in a position to be able to use that content as a
11:26:07 8 reference file for future matching.

11:26:09 9 BY MR. PLATZER:

11:26:13 10 Q. So is the answer no? It's -- DMCA notices are
11:26:18 11 not added to the YTU partition?

11:26:22 12 MR. WILLEN: Objection to the form. The
11:26:23 13 answer is what the answer was.

11:26:31 14 THE WITNESS: So as -- as a matter of course,
11:26:34 15 they are not added automatically to the fingerprint
11:26:38 16 database.

11:26:43 17 The -- the criteria being was it reviewed, and
11:26:47 18 do we have a statement from that right holder that --
11:26:53 19 that they are claiming the entirety of that piece of
11:26:56 20 content, as opposed to any portion thereof.

11:26:59 21 BY MR. PLATZER:

11:27:06 22 Q. Has YouTube ever added -- removed videos to
11:27:12 23 the YTU partition based on a DMCA notice in the absence
11:27:19 24 of partner use of the password protected copyright
11:27:26 25 console?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 87

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:27:28 2 MR. WILLEN: Objection to form.

11:27:39 3 THE WITNESS: I think that we had conducted
11:27:41 4 some -- some limited experiments in this realm to --
11:27:48 5 to -- to see to what extent it would create reliable
11:27:55 6 results, and the results were negative.

11:27:58 7 BY MR. PLATZER:

11:28:01 8 Q. And to be clear, the experiments you're
11:28:05 9 referring to are limited experiments with fingerprinting
11:28:09 10 videos that were subject to a takedown notice, and then
11:28:15 11 blocking matches to those fingerprints going forward?

11:28:18 12 MR. WILLEN: Objection to the form.

11:28:20 13 THE WITNESS: So the experiments were taking
11:28:22 14 some -- some segments of DMCA notices, creating
11:28:28 15 fingerprints, and -- to -- to -- to block future
11:28:34 16 subsequent uploads, but, you know, the direct experience
11:28:39 17 was that the -- that it was highly inaccurate.

11:28:42 18 And -- and, you know, would we -- you know,
11:28:47 19 as -- as previously stated, there are many rights
11:28:52 20 holders in this equation, and -- and every user that
11:28:56 21 uploads to the site with their -- with wholly created
11:29:05 22 videos, you know, not using content from -- from
11:29:08 23 anywhere else, like when I take a video of my kids, I
11:29:13 24 am -- I'm also protected by copyright, and so we must
11:29:18 25 balance the rights of all parties in this equation.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 88

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:29:21 2 BY MR. PLATZER:

11:29:26 3 Q. When did these experiments take place?

11:29:28 4 A. In the -- in the summer of 2009. It had
11:29:36 5 always been supposed before that that this would not --
11:29:40 6 that this would lead to poor results, but we decided to
11:29:46 7 test it and, indeed, it led to poor results.

11:29:50 8 Q. So prior to the summer of 2009, YouTube had
11:29:53 9 not tested fingerprinting videos subject to takedown
11:30:01 10 notices?

11:30:02 11 MR. WILLEN: Objection to form.

11:30:03 12 THE WITNESS: To videos subject to takedown
11:30:05 13 notices where no request -- where no review and
11:30:10 14 subsequent request by a rights holder for it to be
11:30:14 15 included in the fingerprinting database was made.

11:30:17 16 So to be clear, we did create a lot of
11:30:21 17 fingerprints subsequent to DMCA takedowns where the
11:30:26 18 rights holder expressly asked us to also create a
11:30:29 19 fingerprint.

11:30:29 20 BY MR. PLATZER:

11:30:37 21 Q. Was the experiment in the summer of 2009 using
11:30:40 22 Audible Magic technology?

11:30:42 23 A. It was with Google technology.

11:31:02 24 Q. The portion of the YouTube website to which
11:31:07 25 partners could access the check box that requested

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 89

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:31:10 2 the -- a claimed video be fingerprinted, do you have a

11:31:14 3 term that you like to refer to that console as?

11:31:19 4 MR. WILLEN: Objection. Vague as to time.

11:31:23 5 THE WITNESS: Um --

11:31:23 6 BY MR. PLATZER:

11:31:24 7 Q. Again, I'm trying to establish a common

11:31:28 8 vocabulary in order to discuss that interface.

11:31:31 9 A. Today we refer to that interface as CMS, which

11:31:35 10 would -- means content management system.

11:31:41 11 THE REPORTER: I'm sorry. ". . . which

11:31:41 12 means. . . ."

11:31:42 13 THE WITNESS: Content management system.

11:31:45 14 In earlier incarnations of that tool set it

11:31:50 15 had been called "CYC" or "claim your content."

11:31:52 16 BY MR. PLATZER:

11:31:53 17 Q. Okay.

11:31:57 18 A. We just had to discover a more prosaic

11:32:02 19 descriptive name.

11:32:07 20 Q. Other than the experiment that you described

11:32:09 21 in the summer of 2009, had YouTube ever fingerprinted

11:32:14 22 videos that were subject to a DMCA takedown notice that

11:32:19 23 was not received through CYC or CMS?

11:32:26 24 MR. WILLEN: Objection to the form.

11:32:37 25 THE WITNESS: Certainly CMS was the standard

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 90

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:32:41 2 form in which that -- that process happened. The -- the
11:32:53 3 system is vast and complex, and -- and so I could
11:32:56 4 imagine ways in which those requests might have come in
11:32:59 5 through other means.

11:33:00 6 BY MR. PLATZER:

11:33:04 7 Q. Are you aware of any instances in which those
11:33:07 8 requests came in through other means?

11:33:09 9 A. Not off the top of my head.

11:33:13 10 Q. Were there any instances in which copyright
11:33:16 11 owners supplied YouTube with a takedown notice that
11:33:22 12 stated that the entire video, subject to the takedown
11:33:27 13 notice, infringed their copyrights?

11:33:33 14 A. The DMCA notices that come to us as a -- as a
11:33:39 15 general rule, follow the specific template laid out in
11:33:43 16 the DMCA, and that template does not include that level
11:33:49 17 of specificity. I'm sure you're more familiar than me
11:33:55 18 with the specifics of how it's laid out in the DMCA.

11:33:59 19 Q. Well, but the -- the problem you described
11:34:03 20 with fingerprinting videos that are removed pursuant to
11:34:07 21 a takedown notice is that the sender of the takedown
11:34:11 22 notice may only have copyright rights to some subset of
11:34:18 23 the video removed; correct? That was a huge reason for
11:34:20 24 not fingerprinting DMCA --

11:34:20 25 A. Uh-huh.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 95

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:40:18 2 three interfaces or eight interfaces to communicate the
11:40:21 3 same information, but the point remains that there was
11:40:25 4 an interface that allowed a rights holder to communicate
11:40:28 5 that level of information to us.

11:40:30 6 BY MR. PLATZER:

11:40:46 7 Q. Are you familiar with the large takedown
11:40:51 8 notice that Viacom sent YouTube in February of 2007?

11:40:56 9 MR. WILLEN: Objection. I believe this is
11:40:57 10 outside the scope of the 30(b)6 notice.

11:41:00 11 But if you have personal understanding you can
11:41:02 12 answer.

11:41:06 13 THE WITNESS: As a -- you know, as a reader of
11:41:10 14 the news, I -- I was familiar with that event.

11:41:13 15 BY MR. PLATZER:

11:41:15 16 Q. And again, I think I know the answer to this,
11:41:19 17 based on what you've already testified to, but were the
11:41:23 18 videos that Viacom re- -- requested be removed from
11:41:27 19 YouTube in its large February 2007 takedown notice --
11:41:30 20 were those fingerprinted by YouTube for blocking
11:41:36 21 purposes?

11:41:38 22 MR. WILLEN: Objection to form.

11:41:48 23 THE WITNESS: The -- to my knowledge, those --
11:41:51 24 those takedown notices were not turned into
11:42:00 25 fingerprinting references.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 96

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:42:01 2 BY MR. PLATZER:

11:42:47 3 Q. Well, so far we've been talking about cases
11:42:52 4 where YouTube uses Audible Magic to query a video that
11:42:59 5 was uploaded to the YouTube website. And as a -- as a
11:43:03 6 general matter, were all videos that were uploaded to
11:43:10 7 the YouTube website queried against Audible Magic's
11:43:14 8 databases by YouTube?

11:43:16 9 MR. WILLEN: Objection as to form. Vague as
11:43:18 10 to time.

11:43:19 11 THE WITNESS: So could you maybe be more
11:43:20 12 specific about what time frame?

11:43:21 13 BY MR. PLATZER:

11:43:22 14 Q. Okay. Well, does YouTube still use Audible
11:43:24 15 Magic today?

11:43:26 16 A. YouTube uses Google technology today.

11:43:34 17 Q. Okay. But is YouTube also using Audible Magic
11:43:37 18 alongside Google's technology today?

11:43:41 19 A. Not at this time.

11:43:44 20 Q. When did YouTube stop querying Audible Magic?

11:43:48 21 A. At the end of 2009.

11:44:02 22 Q. From the point in time where YouTube began
11:44:04 23 querying Audible Magic up until it stopped at the end of
11:44:08 24 2009, were all newly uploaded videos to YouTube queried
11:44:14 25 against the Audible Magic databases?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

DAVID KING - HIGHLY CONFIDENTIAL

Page 97

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

11:44:20 2 A. Yes, we ran queries against Audible Magic for
11:44:24 3 all uploads to the site during that time.

11:44:28 4 Q. Does the term "legacy fingerprinting" mean
11:44:31 5 anything to you?

11:44:34 6 A. It means something to me. What does it mean
11:44:37 7 to you?

11:44:42 8 Q. Well, once again, I just want to make sure we
11:44:45 9 have a common vocabulary as we move into this topic.

11:44:49 10 A. Uh-huh.

11:44:51 11 Q. But I'd like to ask about any instances in
11:44:53 12 which YouTube queried videos from the back catalog
11:45:02 13 against Audible Magic. Do you have a term that you want
11:45:04 14 to use for that phenomenon?

11:45:06 15 A. We -- we could use the term "legacy."

11:45:09 16 Q. Legacy? Did YouTube at any point use Audible
11:45:12 17 Magic for legacy queries?

11:45:18 18 A. Yes, YouTube did do legacy queries against the
11:45:24 19 Audible Magic database.

11:45:25 20 Q. And did YouTube query its entire catalog
11:45:31 21 against the Audible Magic database?

11:45:37 22 MR. WILLEN: Objection to form.

11:45:39 23 THE WITNESS: Over time, every single YouTube
11:45:41 24 video that is still existent on our servers was queried
11:45:49 25 against the Audible Magic database.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 12:31:18 these shows in smaller chunks."

3 12:31:20 You wrote this language in paragraph 2; right?

4 12:31:23 A. Yes.

5 12:31:25 Q. So what -- was Audible Magic responding to an

6 12:31:35 inquiry by you for a service which would grant enhanced

7 12:31:39 searching abilities for television content?

8 12:31:43 A. I -- I think the way I described it in the --

9 12:31:47 in -- in the paragraph is -- is -- is pretty clear, that

10 12:31:51 we were looking to do look-ups against more long form

11 12:31:58 content.

12 12:32:00 I'd also like to add that concurrently with

13 12:32:03 this communication that -- that Google was already well

14 12:32:11 underway building its own audio and video fingerprinting

15 12:32:16 service, and that that system was already contemplated

16 12:32:22 to do exactly this.

17 12:32:25 So that was another component of the decision

18 12:32:30 process, was simply that this type of functionality

19 12:32:37 would be arriving in -- in the coming months, and so

20 12:32:42 that there were other means to accomplish this goal.

21 12:32:54 Q. And YouTube ultimately didn't reach an

22 12:32:57 agreement with Audible Magic on the Long Form Video

23 12:32:59 Proposal --

24 12:32:59 MR. WILLEN: Objection --

25

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 12:32:59 BY MR. PLATZER:

3 12:33:01 Q. -- correct?

4 12:33:02 MR. WILLEN: Objection to the form.

5 12:33:06 THE WITNESS: The proposal that's in front of

6 12:33:07 me right now did not result in a -- in a change of our

7 12:33:15 service. I think it's worth noting, though, that we did

8 12:33:22 agree to a -- an upgrade to the original service

9 12:33:30 agreement in -- in 2008.

10 12:33:34 BY MR. PLATZER:

11 12:33:35 Q. And that upgrade was to extend the service to

12 12:33:39 Google Video?

13 12:33:40 A. It was to extend the service to Google Video

14 12:33:45 and to -- and to improve service levels of response

15 12:33:52 times of -- and -- and reliability of the system.

16 12:33:57 So we did go beyond our -- our basic

17 12:34:01 commitments and -- and did more than double the -- the

18 12:34:08 financial contribution to Audible Magic, even though we

19 12:34:14 didn't necessarily have to, but we chose to.

20 12:34:18 Q. Okay. But the -- the upgrade that you agreed

21 12:34:22 to with Audible Magic in 2008, that didn't include Type

22 12:34:25 3 look-ups; right?

23 12:34:27 A. It was a different form of -- of upgrade, but

24 12:34:31 we did upgrade our service with them.

25 12:34:33 Q. An upgrade to service levels, not an upgrade

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 12:34:37 to the searching and matching features of the technology

3 12:34:40 they were using?

4 12:34:43 A. Well, search and match is inherently only as

5 12:34:45 powerful as the service. You could have a -- a perfect

6 12:34:50 search system that, if it only every once in a while

7 12:34:54 gave a response would be meaningless.

8 12:34:57 So they are all important components of what

9 12:35:00 you're paying for. So I -- I wouldn't agree with that

10 12:35:04 characterization.

11 12:35:05 Q. Well --

12 12:35:06 A. We paid for greater quality.

13 12:35:09 Q. Well --

14 12:35:09 A. We paid them more for greater quality and more

15 12:35:12 than twice as much. So it was a substantial amount of

16 12:35:15 money.

17 12:35:15 Q. But following the -- following the

18 12:35:18 implementation of the service upgrade in 2008, Audible

19 12:35:21 Magic was still only looking against the first 60

20 12:35:27 seconds of YouTube's reference fingerprint; right?

21 12:35:31 A. In what time frame?

22 12:35:32 Q. At -- following -- even following the service

23 12:35:35 upgrade in 2008.

24 12:35:38 A. So you're asking, in 2008, were the look-ups

25 12:35:43 60-second look-ups? Is that your question? Tell me --

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 12:35:48 just, please -- please rephrase so I can -- or just ask

3 12:35:53 me again.

4 12:35:54 Q. Under the original agreement with Audible

5 12:35:56 Magic --

6 12:35:56 A. Yes.

7 12:35:57 Q. -- Audible Magic was only querying against

8 12:35:59 fingerprints that corresponded to the first 60 seconds

9 12:36:02 of the reference file; right?

10 12:36:05 A. That's what's documented here, yes.

11 12:36:08 Q. Okay. And following the service upgrade in

12 12:36:10 2008, that still remains the case; right?

13 12:36:15 A. That remained the case. Of course, in 2008 we

14 12:36:19 were doing complete file scans using the audio and video

15 12:36:25 fingerprinting technology developed in-house at Google.

16 12:36:29 Q. Okay. Did YouTube do any testing of the

17 12:36:35 technology that Audible Magic was proposing for the Type

18 12:36:39 3 Long Form Video Proposal reflected in this document?

19 12:36:44 MR. WILLEN: Objection to the form.

20 12:36:49 THE WITNESS: I'm not -- I -- I'm not aware of

21 12:36:52 us having actively tested what was stipulated in this

22 12:36:56 proposal.

23 12:36:57 BY MR. PLATZER:

24 12:36:57 Q. Are you aware of YouTube ever testing Audible

25 12:37:02 Magic's Type 3 look-up technology?

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 12:37:08 A. I am not aware of Type 3 Audible Magic

3 12:37:20 look-ups being tested.

4 12:37:22 Q. You testified earlier as to YouTube's reasons

5 12:37:25 for not entering into an agreement with Audible Magic on

6 12:37:28 the Type 3 music look-up proposal. Why did YouTube not

7 12:37:32 reach an agreement with Audible Magic on the Long Form

8 12:37:34 Video Proposal?

9 12:37:38 A. The two proposals were -- were linked and --

10 12:37:43 and had the -- the same characteristics. So my

11 12:37:48 testimony is the same for both.

12 12:37:55 Q. Okay.

13 12:37:58 MR. WILLEN: Maybe this is a good time to

14 12:37:59 break for lunch?

15 12:38:01 MR. PLATZER: I agree.

16 12:38:02 MR. WILLEN: All right. Good. We're in

17 12:38:04 agreement.

18 12:38:05 THE VIDEOGRAPHER: We're going off the record.

19 12:38:07 The time is 12:38 p.m.

20 12:38:17 (Lunch break.)

21 AFTERNOON SESSION

22 WEDNESDAY, JANUARY 13, 2009; 1:21 P.M.

23

24 13:21:15 THE VIDEOGRAPHER: We are back on the record.

25 13:21:16 The time is 1:21 p.m.

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 13:21:33 MR. WILLEN: Oh, yes.

3 13:21:34 MR. PLATZER: Counsel and I -- I discussed
4 13:21:37 during a break a document I intend to introduce as an
5 13:21:40 exhibit.

6 13:21:42 MR. WILLEN: And I -- I don't think we have
7 13:21:43 any objection to you using the document.

8 13:21:46 MR. PLATZER: Okay.

9 13:21:47 (King Deposition Exhibit Number 8 was marked
10 13:21:47 for identification.)

11 13:22:05 MR. PLATZER: 8.

12 13:22:06 THE REPORTER: 8.

13 13:22:06 BY MR. PLATZER:

14 13:22:10 Q. The court reporter handed you a document
15 13:22:13 that's been marked as King Exhibit 8. It's a PowerPoint
16 13:22:18 presentation entitled "Fingerprinting and Other Research
17 13:22:22 Technologies Workshop May 4, 2007, YouTube Audio and
18 13:22:24 Fingerprinting, David King, Franck Chastagnol, bears
19 13:22:30 Bates numbers Google 1950611 through 0950618.

20 13:22:39 Have you seen the document before that is
21 13:22:41 marked as King Exhibit 8?

22 13:22:46 A. I believe I have, yes.

23 13:22:49 Q. Is this a PowerPoint presentation that you
24 13:22:53 gave?

25 13:22:58 A. It would -- that -- I think so. I can't

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 13:23:01 remember the precise settings.

3 13:23:03 There seems to be an echo.

4 13:23:10 I -- I don't remember the precise setting, but

5 13:23:12 it looks like my work.

6 13:23:13 BY MR. PLATZER:

7 13:23:15 Q. Okay. Do you remember generally to whom this

8 13:23:17 PowerPoint presentation would have been given?

9 13:23:20 MR. WILLEN: Objection to the form.

10 13:23:24 THE WITNESS: Honestly, I -- I don't recall

11 13:23:28 what -- what this PowerPoint was developed for or who

12 13:23:32 the audience was.

13 13:23:33 BY MR. PLATZER:

14 13:23:33 Q. Okay.

15 13:23:42 A. It's been almost three years.

16 13:23:44 Q. Yeah.

17 13:23:44 A. And I --

18 13:23:44 Q. If you could turn to the page that has the

19 13:23:47 Bates number 1950615.

20 13:23:50 A. Uh-huh.

21 13:23:52 Q. It begins:

22 13:23:56 "1. Fingerprinting," and there's a bullet

23 13:24:00 point under that, says, "How well does it

24 13:24:03 work," and it says, "Audio fingerprinting from

25 13:24:05 3rd party solution is very accurate (Audible

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 13:24:05 Magic). No false positives, false negatives

3 13:24:08 are unknown."

4 13:24:10 A. Uh-huh.

5 13:24:11 Q. Did you write this part of the presentation?

6 13:24:22 A. I honestly don't recall whether -- who -- who

7 13:24:26 did most of the writing on this, whether it was Franck

8 13:24:29 or me, but -- so I -- I don't recall.

9 13:24:41 Q. Aside from whether or not you wrote this

10 13:24:44 document, do you agree with the sentiment expressed in

11 13:24:47 this first dash point on the page?

12 13:24:50 MR. WILLEN: Objection to form.

13 13:24:51 THE WITNESS: You know, earlier on, at the

14 13:24:53 beginning of the -- of the day, we -- we spoke a little

15 13:24:55 bit about the way a fingerprinting system is judged, and

16 13:25:00 there's two factors. There's accuracy and there's

17 13:25:03 recall. And this seems to say that accuracy coming in

18 13:25:08 from Audible Magic was good, and that recall was

19 13:25:12 something that we could not know.

20 13:25:14 BY MR. PLATZER:

21 13:25:18 Q. And when you say "recall," what do you mean by

22 13:25:21 that term?

23 13:25:22 A. Recall is otherwise understood as false

24 13:25:25 negatives. So imagine that you take 100 videos, and you

25 13:25:32 search against a fingerprint database. There -- there

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 13:25:36 are two factors that you're looking out for.

3 13:25:39 One is, when it says it's a match, is it

4 13:25:43 indeed correct? Can it be relied on? That's accuracy.

5 13:25:47 So does it tell you things that are incorrect, or does

6 13:25:50 it generally -- is it generally correct?

7 13:25:54 The second thing is, you know, I could achieve

8 13:25:58 a perfect accuracy rate by saying nothing matched,

9 13:26:01 and -- and I would be making no false positives, but if

10 13:26:06 there were indeed things that should have matched, then

11 13:26:09 that would be what we call a false negative, or -- which

12 13:26:12 is usually formulated the other way around, in -- in

13 13:26:16 terms of recall. The ability for it to pull out a

14 13:26:18 match. So this is a general sort of search term.

15 13:26:22 Q. Okay. So you're using the term "accuracy" to

16 13:26:24 refer to low false positives and "recall" to refer to

17 13:26:29 low false negatives?

18 13:26:31 A. Yes, and are we clear on -- did I clear up

19 13:26:34 what those are?

20 13:26:35 Q. Yes, that's very helpful. Thank you.

21 13:26:38 A. Okay.

22 13:26:39 Q. So was YouTube -- was it YouTube's view that

23 13:26:43 Audible Magic technology had a high accuracy rate as

24 13:26:47 expressed on this document?

25 13:26:49 A. Sorry about that.

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 13:26:52 MR. WILLEN: I don't know if he was entirely

3 13:26:54 listening to the question, because he was distracted

4 13:26:57 based on --

5 13:26:59 THE WITNESS: He -- he put his mouse in a

6 13:27:01 puddle. I was worried again.

7 13:27:04 MR. WILLEN: Have the question again.

8 13:27:05 BY MR. PLATZER:

9 13:27:06 Q. Was it YouTube's view that Audible Magic
10 13:27:06 technology had a high accuracy rate?

11 13:27:09 A. Yes. That is correct. And it's a matter of
12 13:27:17 tuning as well. So, you know, I think, as you seek to
13 13:27:19 get higher recall, you put more pressure on your
14 13:27:22 accuracy. So you start -- so it's a -- you know, it --
15 13:27:26 it's a -- it's a balance point in any system, which I
16 13:27:29 think would also be true of a human.

17 13:27:32 You know, as a human, if you're trying to
18 13:27:35 respond to a -- you know, to something where you're
19 13:27:38 scanning through your memory, you can either be
20 13:27:41 extremely conservative and very accurate, or you can dig
21 13:27:45 a little deeper and make more suppositions and take more
22 13:27:49 guesses, and you'll bring back more information, but
23 13:27:52 your accuracy rate will suffer.

24 13:27:54 Q. Did YouTube tune Audible Magic's
25 13:28:01 fingerprinting technology to minimize false positives?

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 13:28:08 MR. WILLEN: Objection to the form.

3 13:28:09 THE WITNESS: Audible Magic did not surface

4 13:28:09 any methods for us to tune that balance point. They

5 13:28:09 tuned it that way.

6 13:28:11 BY MR. PLATZER:

7 13:28:12 Q. Okay. And did -- is the sentiment that's

8 13:28:15 expressed on the page we're looking at on this exhibit

9 13:28:20 that Audible Magic had high accuracy, was that YouTube's

10 13:28:25 view for the use of Audible Magic to identify television

11 13:28:29 content as well?

12 13:28:30 MR. WILLEN: Objection to the form. Vague as

13 13:28:34 to time.

14 13:28:39 THE WITNESS: This bullet doesn't speak to

15 13:28:41 that, and I don't think that -- I think it's not -- you

16 13:28:44 know, the level of specificity here is, in general, the

17 13:28:49 Audible Magic service has produced accurate results.

18 13:28:56 BY MR. PLATZER:

19 13:28:57 Q. Well, independently of this document -- I'm

20 13:28:59 asking you in your capacity as a corporate

21 13:29:02 representative for YouTube -- was -- was it YouTube's

22 13:29:06 belief that Audible Magic was accurate for identifying

23 13:29:08 television content?

24 13:29:10 MR. WILLEN: Objection. Vague as to time.

25 13:29:16 THE WITNESS: I think there -- that there